

**MEMO ENDORSED**

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

CASE NO.: 1:23-cv-03211-KPF

MT. HAWLEY INSURANCE COMPANY,

Plaintiff,

vs.

18335 NW 27th AVE LLC, and  
NECHES MANAGEMENT LLC

Defendants.

**DEFENDANTS' MOTION TO DISMISS OR IN THE ALTERNATIVE STAY THE  
PROCEEDING**

COMES NOW Defendants, 18335 NW 27th AVE LLC and NECHES MANAGEMENT LLC by and through the undersigned counsel files the following motion to dismiss or in the alternative Stay Plaintiff's, MT. HAWLEY INSURANCE COMPANY, complaint for declaratory judgment pursuant to a lack of subject matter jurisdiction and the Court's discretionary jurisdiction granted under the Declaratory judgment Act, 28 U.S.C. § 2201(a) ("DJA").

Respectfully submitted,

SELTZER MAYBERG, LLC  
10750 NW 6<sup>th</sup> Court  
Miami, Florida 33168  
Tel: 305.444.1565  
Fax: 305.444.1665

BY:

s/ David Seltzer

David S. Seltzer  
New York Bar No: 5735139

The Court is in receipt of Defendants' motion to dismiss. (Dkt. #16-17). The Court's Individual Rules of Practice in Civil Cases require any party seeking to file a motion to dismiss to first file a pre-motion letter. See Individual Rule 4.A. Defendants did not comply with that requirement, and thus their motion is DENIED as premature. Defendants are ORDERED to review the Court's Individual Rules of Practice in Civil Cases and to take care to comply with them going forward.

The Court construes Defendants' memorandum of law in support of their motion to dismiss (Dkt. #17) as a pre-motion letter. If Plaintiff does not consent to Defendants' intended motion, it shall file a responsive letter, not to exceed three pages, on or before **July 10, 2023**, setting forth its position.

The initial pretrial conference scheduled for **July 26, 2023** (Dkt. #8, 15), is hereby CONVERTED to a pre-motion conference. The parties should be prepared to discuss the anticipated motion to dismiss at that conference. The parties need not submit a joint letter or proposed case management plan ahead of that conference.

The Clerk of Court is directed to terminate the motions at docket entries 16 and 17.

Dated: July 6, 2023  
New York, New York

SO ORDERED.

A handwritten signature in blue ink, reading "Katherine Polk Failla".

HON. KATHERINE POLK FAILLA  
UNITED STATES DISTRICT JUDGE